



STATE OF UTAH CONTRACT

1. **CONTRACTING PARTIES:** This contract is between the following agency of the State of Utah:
 Department: UTAH DEPT OF TRANSPORTATION Agency Code: 810 Division: UDOT, referred to as (STATE), and the following
CONTRACTOR:

Birdies Sales
 Name
1291 E. Expressway Lane
 Address
Spanish Fork Utah 84660
City State Zip

LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor
☐ Non-Profit Corporation
☒ For-Profit Corporation
☐ Partnership
☐ Government Agency

Contact Person Clinton Bird Phone #801-798-1149 Email birdiessales@aol.com
 Federal Tax ID# 87-0564221 Vendor #91304C A Commodity Code #74017000000

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide:
 Portable Air Compressors - \$10,499.00/unit Option 1: 250 cfm compressor \$15,950.00 Option 2: 86" Drawbar \$300.00
 Option 3: Spare Tire \$150.00
3. **PROCUREMENT:** This contract is entered into as a result of the procurement process on RX# 810 56300000019, FY2005,
 Bid#RF5084.
4. **CONTRACT PERIOD:** Effective date: 12/08/04 Termination date: 12/07/06 unless terminated early or extended in accordance with the
 terms and conditions of this contract. Renewal options (if any): Three (3), one-year renewals.
5. **CONTRACT COSTS:** REQUIREMENTS CONTRACT.
6. **ATTACHMENT A:** Division of Purchasing's Standard Terms and Conditions
ATTACHMENT B: Specifications
- Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.**
7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**
 a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
 b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid #RF5084 dated 11/15/04.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE

Wendy A. Bird 12/21/04
 Contractor's Signature Date
Wendy Bird President
 Type or Print Name and Title

David R. Rottmann
 Agency's Signature
DR Rottmann JAN 13 2005
 Director, Division of Purchasing Date
 CONTRACT RECEIVED AND
 PROCESSED BY
DIVISION OF FINANCE JAN 14 2005
 Director, Division of Finance

<u>Paul Rottmann</u>	<u>801-965-4078</u>	<u>801-965-4073</u>	<u>prottmann@utah.gov</u>
Agency Contact Person	Telephone Number	Fax Number	Email

(Revision 09/30/2003)

APR 25 2005
 ENT'D FEB 22 2005

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable

for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. and Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract:
1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Special Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)

UTAH DEPARTMENT OF TRANSPORTATION
Equipment Operations
Steve McCarthy - Equipment Operations Manager

PORTABLE AIR COMPRESSOR

PART I: GENERAL CLAUSES AND CONDITIONS

1. The equipment furnished under this specification shall be the latest improved model in current production, as offered to commercial trade, and shall be of quality workmanship and material. The supplier represents that all equipment offered under this specification is new at time of delivery. DISCONTINUED, DEMONSTRATOR OR DEVELOPMENTAL MODELS ARE NOT ACCEPTABLE.
2. The units shall be completely assembled and adjusted. All equipment, including standard and supplemental equipment, shall be installed, and the units shall be serviced and ready for continuous operation.
3. All parts not specifically mentioned, but are necessary for the units to be complete operation, or which are normally furnished as standard equipment, shall be furnished by the supplier. All parts shall conform in strength, quality and workmanship to the accepted standards of the industry.
4. The units provided shall meet or exceed all Federal and State of Utah safety, health, lighting and noise regulations and standards in effect, and which are applicable to equipment furnished, at the time of acceptance.
5. It is the intent of STATE to purchase goods, equipment and services having the least adverse environmental impact, within the constraints of statutory purchasing requirements, departmental need, availability, and sound economical considerations. Suggested changes and environmental enhancements for possible inclusion in future revisions of this specification are encouraged.
6. STATE encourages all manufacturers to comply, voluntarily, with the Society of Automotive Engineers (SAE) recommended practices.
7. Measurements will be given in the English system.
8. Failure to provide and comply with Part I of bidder submitted specifications will result in bid(s) being declared non-responsive.

PART II: GENERAL SPECIFICATIONS

1. **SCOPE:**
The intent of this specification is to define the minimum acceptable standards for a portable air compressor for use in highway maintenance.
Example(s):
Ingersoll-Rand P185WIR
Sullair P185WJD.
2. **NOTICE TO CONTRACTORS:**
Any example shown is listed to show type and class of equipment desired. Bidders are cautioned to read the specifications carefully, as there may be special requirements not commonly offered by the equipment manufacturer. Do not assume your standard equipment meets all detailed specifications merely because it is listed as an example. CONTRACTORS are cautioned that units delivered to the FOB points, which do not meet specifications in every aspect will be rejected.

PART III, DETAILED SPECIFICATIONS, PORTABLE AIR COMPRESSOR

1. CAPACITY:

185 cfm, free air delivery at 100 psi minimum.

2. ENCLOSURE:

- 2.1 Shall have a sheet metal housing fully enclosing the compressor unit. Providing protection as well as noise attenuation.
- 2.2 Shall have dedicated tool storage area incorporated within the enclosure.
- 2.3 The doors shall be lockable and equipped with no-rust hinges and pneumatic lift springs.

3. MOUNTING:

- 3.1 Shall be trailer mounted and two, 15 inch wheels design including fenders.
- 3.2 Shall have a screw jack with caster on draw-bar.
- 3.3 Shall have a draw-bar with 2 ½ inch minimum I.D. pintle eye and safety chains.
- 3.4 The height of the draw bar shall be adjustable from approximately 18 to 26 inches using 2 inch increments.
- 3.5 The Draw-bar shall be 54 inches minimum, from front of frame to center of pintle eye.

4. LIGHTS:

- 4.1 Shall have stop, turn and tail lights and all required reflectors and clearance lights.
- 4.2 Shall have a Pollak 11-702 plug. A wiring diagram shall be sent upon request.

5. AIR END:

- 5.1 Shall be a direct drive, rotary screw type design.
- 5.2 Shall have an air receiver/oil separator with oil level gauge.
- 5.3 Shall have a dual element air filter for compressor.

6. ENGINE:

- 6.1 Shall be an industrial water cooled, diesel powered engine with 78 gross hp minimum.
- 6.2 Shall have a cold weather starting aid.
- 6.3 Shall be protected to -30 degrees minimum.
- 6.4 Shall have a separate dual element air intake filter.

Specification: 1501 PORTABLE AIR COMPRESSOR, Revised 1 September 2004

6.5 Shall have a 12 volt electrical system with 700 CCA battery minimum.

7. CONTROLS:

7.1 Shall have an output air pressure regulator and gauge.

7.2 Shall have safety shutdowns for high air temperature, high engine temperature and low engine oil pressure.

7.3 Shall have an hour meter and fuel gauge.

7.4 Shall have reset type air filter and oil separator service indicators.

7.5 Shall have engine temperature gauge, oil pressure gauge and voltmeter.

8. PAINT:

Complete unit shall be painted manufactures standard color. Dealer's advertising to be omitted.

PART IV: PARTS AND SERVICE

The Contractor must have a Service Center located in the Salt Lake City, Utah area. Consideration will not be given to bidders unable to satisfy the Utah Department of Transportation or the Division of Purchasing as to the adequacy of their service facilities and the availability of replacement parts.

PART V: DELIVERY, DOCUMENTATION, ACCEPTANCE AND PAYMENT

1. DELIVERY REQUIREMENTS

1.1 Delivery shall be within 60 days after receipt of order. At State's option, an extension may be granted, whichever is in State's best interest. Unless a delivery extension is granted for acceptable reasons due to circumstances beyond the vendor's control, liquidated damages of \$20.00 will be deducted from the invoice for every working day after the expiration of the number of days shown on the purchase order until the units are delivered. This provision is not intended as a penalty but as liquidated damages.

1.2 Delivery shall be at no additional charge for locations within a fifty (50) mile radius of the Utah State Capital building.

2. TRAINING

2.1 INSTRUCTION ON SAFETY, OPERATION AND MAINTENANCE: The vendor shall provide the services of a competent, factory-trained, technician thoroughly trained in the use and operation of the units offered to STATE.

2.2 Vendor shall provide instruction on safety, operation and preventive maintenance of the units, after the units have been delivered and is ready for operation but prior to payment. The instruction shall include a full demonstration of all the unit(s) functions on the unit(s) delivered. Instruction shall identify potentially hazardous situations when working.

2.3 LESSON PLAN: The supplier shall furnish a copy of the manufacturer's approved lesson plan for the instructional training within 30 days after award of the purchase order. The lesson plan may be taken from the operator's manual, provided all necessary information is included.

3. DOCUMENTATION

- 3.1 Delivery must include Supplier's Invoice, a Copy of Warranty(s) and an Operator's Manual for each unit.
- 3.2 Operators Manual shall include start up procedure, check list for data collection, shut down procedure, check list for winter storage and check list for return to service.
- 3.3 Delivery must also include two (2) complete sets of parts lists, and two (2) sets of shop (repair) manuals at no additional charge.

4. ACCEPTANCE

- 4.1 All equipment ordered with this request will be subject to acceptance inspection and performance testing upon receipt.
- 4.2 Acceptance inspection and performance testing will not take more than five working days, weather permitting.
- 4.3 The vendor will be notified within this time frame of any units that do not comply with the purchase order specifications.
- 4.4 If any units are canceled for non-acceptance, the needed equipment may be purchased elsewhere and the vendor may be charged full increase, if any, in cost and handling.

5. PAYMENT

Invoices will not be approved for payment until all of the required spare parts, filters, documentation and manuals have been received and the equipment has been accepted.